HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

WRIT PETITION No.17257 OF 2000

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Between:

M.Kurmaiah Goud
.....Petitioner

AND

A.P. Transco,
represented by its Director,
Vidyut Soudha,
Hyderabad & another.
.....Respondents

:: O R D E R ::

Counsel for the petitioner : Sri T.Nagarjuna Reddy for Sri T.Niranjan Reddy

Counsel for the respondents : Sri Samineni Kishore

24th January, 2007

In this petition, the petitioner has prayed for quashing communication dated 11-7-2000, vide which Superintending Engineer, Operation Circle, A.P. Transco, Mahbubnagar (respondent No.2) rejected his candidature

for appointment as Junior Lineman on the ground that the certificate produced by him in support of his claim of having worked with the contractor is not genuine.

It is borne out from the record that Writ Petition No.28080 of 1997 filed by the petitioner for issue of a direction to the respondents to consider his candidature for appointment in accordance with the policy decision contained in B.P.Ms.No.36, dated 18-5-1997 was disposed of by the learned Single Judge by directing respondent No.2 to consider his case. Thereafter, the petitioner was interviewed, but the result of interview was not announced. This led to filing of Writ Petition No.25717 of 1999. The learned Single Judge disposed of the writ petition at the admission stage and directed the respondents to declare the result. Thereafter, respondent No.2 issued the impugned communication, the relevant extracts of which are reproduced below:

> "In the reference 1st cited, the Hon'ble High Court passed orders that "to consider the claim of the petitioner in the light of B.P.Ms.No.36, dated 18-5-1997 provided he is eligible for absorption.
>
> In pursuance of the above orders of the High Court, you have been interviewed on 28-10-1997 by the selection committee.
>
> On verification of records produced by you, the following was noticed.
>
> "The Agreement Numbers given in the service certificate do not pertain to the works taken up by the contractor who issued the Service Certificate. Hence, the certificate produced by you is not acceptable as it is not a genuine."
>
> In view of the above, your case for appointment for the post of Junior Lineman cannot be considered

and hence rejected."

The petitioner has pleaded that the rejection of his candidature for appointment as Junior Lineman is vitiated by arbitrariness inasmuch as, the factum of his having worked with the contractor engaged by the Andhra Pradesh State Electricity Board cannot be disputed. He has further pleaded that the rejection of his candidature is liable to be invalidated on the ground of non-application of mind by respondent No.2.

In the counter affidavit filed on behalf of the respondents, it has been averred that the petitioner was not considered eligible for recruitment as Junior Lineman because his certificate was not genuine. The stand of the respondents is evinced from paragraphs 4 and 5 of the affidavit of Sri B.S.Ramachandra Rao, Assistant Secretary (Legal), A.P. Transco, which are reproduced below:

> "4. Adverting to paras 5, 6, 7 & 8 of the affidavit, it is submitted that it is a fact that the erstwhile APSEB has issued B.P.Ms.No.36, dt.18-5-1997 ordering to fill up 50% vacancies of Junior Lineman/JPA/LDC/Typist/ Sub-Engineer by giving suitable guidelines for making recruitments from among the ex-casual labour, Village Electricity Worker and contract labour. According to the above guidelines, interviews were held in Operation Circle, Mahbubnagar on 27-10-1997, 28-10-1997, 4-4-1998, 12-6-1998, 21-6-1998 and 2-2-1999. The petitioner has attended for interview on 28-10-1997. On verifying the certificates produced by him it is found that he has worked with M/s.Raghavendra Engineering Contractors, Mahbubnagar from 1-5-1989 to 31-5-1997 for the works of erection of 33/11

KV lines under Agreement Numbers 2/94-95, 119/94-95 and T-104/97-98, duly countersigned by the AAE/C&O/Mahbubnagar. The Service Certificate produced by the candidate is having corrections made with white fluid at one place. When the same has been referred to AAE/C&O/Mahbubnagar vide this office memo No.SE/OP/MBNR/Adm-C2/D. No.65, dt.10-4-2000, the AAE/C&O/Mahbubnagar vide his Lr.No.AAE/C&O/MBNR/D.35, DT.22-4-2000 has certified that the Service Certificate issued by the contractor is genuine mentioning K2 Agreement Number 119/97-98. When the case has been referred to the Divisional Engineer/Operation/Mahbubnagar vide this office Memo No.SE/OP/MBNR/ Adm-C2/D.No.99/2000, dt.22-5-2000, the DE/OP/Mahbubnagar in his Lr.No.DE/OP/MBNR/Adm-C1/D.No.28, dt.6-6-2000 has informed that the Agreement Number K2/104/97-98 pertain to the hiring of jeep entered by the contractor by name Sri M.A.Samad and K2 Agreement Number 119/97-98 pertains to Operation and Maintenance of 33/11 KVSS, Kollur, entered by Sri Md.Inayathulla Shariff. The Service Certificate issued by M/s.Raghavendra Engineering Contractor to Sri M.Kurmaiah Goud is not correct as the Agreement Numbers and the nature and location of the works pertain to some other contractors. Hence, speaking orders were issued to the petitioner vide this office Lr.No.SE/OP/MBNR/Adm-C2/D.No.4845/2000,dt.11-7-2000 stating that the "Agreement Numbers given in the Service Certificate do not pertain to the works taken up by the contractor who issued the service certificate. Hence, the service certificate issued by the contractor and produced by the candidate is not acceptable as it is not a genuine."

5. Adverting to paras 8, 9 & 10 of the affidavit, it is submitted that the DE/Transformers/Mahbubnagar and with the assistance of AE/Tech. has to inspect the sheds

where the failed Transformers are being repaired in the district periodically to assess whether the work is being carried out by the contractor as per the specifications contained in the agreement. Accordingly, they have inspected the site of M/s.Raghavendra Engineering Works and have signed in the register. The case of the petitioner has been considered by the Selection Committee on 28-10-1997 based on the service certificate issued by the contractor and produced by the petitioner at the time of interview which is subsequently found as bogus. Hence, his claim for appointment in APSEB/APTRANSCO is rejected. In this connection, it is submitted that.... could be considered for making appointment but not subsequent material produced at a later date. Mere availability of his name in the wage register of the contractor does not entitle him to claim absorption in APSEB/APTRANSCO as his services have not been utilized by the contractor for the works of this Circle.

It is also submitted that in this office Memo No.SE/OP/MBNR/Adm-C2/D/No.208, dt.25-10-2000 explanation of the AAE/C&O/Mahbubnagar who has countersigned the above service certificate issued by the contractor has been called for submitting wrong information. The AAE/C&O/Mahbubnagar in his explanation received vide Lr.No.DE/OP/ MBNR/Adm-C2/F.No.58/D.No.88, dt.6-12-2000 has informed that because of the several problems being faced by him in field he has countersigned the above service certificate without properly verifying the agreement numbers which is erroneously certified by him is a mistake on his side and requested to exonerate him for the above mistake. For having countersigned on a bogus service certificate issued by the contractor, disciplinary action is being initiated against the AAE/C&O/Mahbubnagar."

The petitioner has not filed rejoinder affidavit to controvert the averments contained in the counter affidavit of the respondents. Therefore, the assertions contained in paragraphs 4 and 5 of the counter affidavit will have to be treated as correct.

I have heard learned counsel for the parties and perused the record. In my opinion, the writ petition is liable to be dismissed because,

(i) the petitioner has not produced before the Court the certificate allegedly issued by the contractor and without going through the contents of the certificate, it is not possible for the Court to express any opinion on its genuineness or otherwise, and

(ii) the question whether the certificate produced by the petitioner is genuine or not requires investigation into issues of fact, and such an exercise cannot be undertaken by the High Court in exercise of power under Article 226 of the Constitution of India.

For the reasons stated above, the writ petition is dismissed leaving the petitioner free to avail any other legal remedy, which may be available to him.

G.S.SINGHVI, C.J.

24th January, 2007.

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